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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Communication No. 468/2011

Decision adopted by the Committee at its fifty-fourth session (20 April to 15 May 2015)

Submitted by:	Z (represented by Tarig Hassan)
Alleged victim:	Z
State party:	Switzerland
Date of complaint:	20 June 2011 (initial submission)
Date of decision:	5 May 2015
Subject matter:	Expulsion of the complainant to Algeria
Procedural issues:	None
Substantive issues:	Risk of ill-treatment
Articles of the Convention:	3 and 22

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Annex

Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fourth session)

concerning

Communication No. 468/2011*

Submitted by:	Z (represented by Tarig Hassan)
Alleged victim:	Z
State party:	Switzerland
Date of complaint:	20 June 2011 (initial submission)

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 5 May 2015,

Having concluded its consideration of complaint No. 468/2011, submitted to the Committee against Torture on behalf of Z under article 22 of the Convention,

Having taken into account all information made available to it by the complainant, his counsel and the State party,

Adopts the following:

Decision under article 22, paragraph 7, of the Convention

1.1 The complainant is Z, an Algerian national born on 26 June 1974 and residing in Switzerland. He maintains that his forced return to Algeria would constitute a violation by Switzerland of article 3 of the Convention. He is represented by counsel, Tarig Hassan.

1.2 On 12 July 2011, the Committee, through its Rapporteur on new complaints and interim measures, requested the State party to refrain from expelling the complainant to Algeria while his communication was under consideration by the Committee.

The facts as submitted by the complainant

2.1 The complainant, who is originally from Aïn Témouchent, is a graduate in computer science. In September 2000 he received an order to report for military service. During his service, he was assigned first to the Special Forces Training School, where he spent six months working in the information technology section and as an interpreter, and then to the Land Forces Command within the Department of Military Infrastructure. Because of the duties entrusted to him (the complainant was

* The following members of the Committee participated in the examination of the present communication: Ms. Essadia Belmir, Mr. Alessio Bruni, Mr. Satyabhoosun Gupt Domah, Mr. Abdoulaye Gaye, Mr. Jens Modvig, Mr. Sapana Pradhan-Malla, Mr. George Tugushi and Mr. Kening Zhang.

involved in, among other things, preparing annual military infrastructure reports), he was privy to information classified as "top secret" by the Ministry of Defence, such as the location of stockpiles of all types of armaments, including missiles and tanks. On completion of his compulsory military service, the complainant was forced to stay in the army by his superiors and to work as an English teacher for three years. During those three years, he again had access to information classified as confidential.

2.2 On 15 March 2005, on completion of his contract with the Ministry of Defence, the complainant asked to leave the army. However, his superiors "did not want to let him go" and forbade him to leave the country. The complainant reports that he felt he was being watched. He was also summoned on four or five occasions to report to the Al-Machwar military post in Tlemcen. During interviews at the military post, the complainant was questioned about his contacts with a former colleague who had joined the Islamic Front. In the course of the last interview, the complainant was charged with revealing military secrets to that former colleague, who was described as a terrorist.

2.3 In early June 2005, the complainant was brought before the Blida military court. He was held in detention and investigated for 25 days. As there was insufficient evidence against him, the charges were dropped, and the complainant was released. However, the complainant alleges that he was kept under surveillance by the army. Fearing rearrest, the complainant left Algeria for Tunisia on 10 September 2005. On 17 November 2005, he travelled to Switzerland via Italy and filed an asylum application the same day.

The complaint

3.1 The complainant maintains that his forced return to Algeria would constitute a violation by the State party of his rights under article 3 of the Convention because of the risk he runs in Algeria of being subjected to treatment contrary to the Convention. The complainant refers in particular to the chapter of the 2011 Amnesty International Annual Report concerning Algeria, which states that human rights, and specially the right not to be subjected to torture or other inhuman or degrading treatment, are regularly violated by the Algerian authorities as part of the fight against terrorism. According to the report, terrorism suspects are often denied a fair trial; some are convicted on the basis of confessions extracted under torture or other duress, while others are sentenced to death by military courts. The complainant asserts that, because of his contacts with a friend who had joined the Islamic Front, he was himself suspected by the Algerian authorities of collaborating with terrorists and providing them with information on the location and make-up of military arsenals. The complainant contends that, although he was not previously tortured, he runs a real risk of being tortured if he is expelled to Algeria.

3.2 The complainant further asserts that he is currently wanted by the Algerian authorities. In support of this allegation, he submits an Algerian Ministry of Defence document dated 15 November 2005, which states that the complainant is in an irregular situation with regard to the performance of his military service, that he is considered a deserter and that a warrant has been issued for his arrest. The complainant also submits a letter dated 23 March 2011 from Mr. N, an Algerian lawyer employed by the complainant's family, who alleges that the complainant is still wanted by the Al-Marsa Al-Kabir military court. In support of his allegations, the complainant refers to various independent reports, according to which individuals who have completed their military service must remain at the disposal of the Ministry of Defence, failing which they will be considered deserters and will be subject to

criminal proceedings. In addition, they are unable to leave the country without special authorization.[1] According to these same reports, if a deserter joins an armed group or enemy forces, he may become liable to the death penalty.[2] The complainant left Algeria without authorization although he was supposed to remain at the disposal of the military authorities; he is thus at risk of being arrested, detained and prosecuted on his return to Algeria. The complainant alleges that because of the charges held against him of collaborating with the Islamic Front, he runs a serious and personal risk of being subjected to torture.

3.3 The complainant argues that he has exhausted all domestic remedies. On 17 November 2005, he filed an asylum application in Switzerland. In support of his application, he submitted documents to the authorities that had been supplied by his family in Algeria, including identity documents and an Algerian military police document dated 15 November 2005 stating that the complainant was wanted. On 12 January 2007, the Federal Office for Migration (FOM) rejected his application without examining the merits. The complainant subsequently appealed the decision before the Federal Administrative Court, which rejected his application on 30 October 2007. The complainant then filed requests for reconsideration with FOM, which rejected the requests, by decisions of 20 December 2007 and 26 March 2008, on the grounds of non-payment of procedural costs. A third request for reconsideration was rejected by FOM on 7 May 2009. Ultimately, the complainant filed an administrative appeal with the Federal Administrative Court, which annulled the decision of FOM in a judgement dated 31 March 2009. However, in a judgement dated 7 May 2009, the Federal Administrative Court rejected the complainant's request for review.

State party's observations on the merits

4.1 In its observations on the merits of the communication dated 12 January 2012, the State party contests the merits of the complaint with respect to the complainant's allegations concerning possible ill-treatment in Algeria. The State party recalls the Committee's general comment No. 1 (1997) on the implementation of article 3 of the Convention in the context of article 22 thereof, which states that the risk of torture must be foreseeable, real and personal. The State party notes that these requirements have not been met in this case: the complainant does not claim to have suffered torture, and he has explicitly stated that nothing happened to him during the 25 days of his detention in June 2005.[3] Furthermore, the complainant has not been involved in political or religious activities, either in Algeria or Switzerland.[4] The State party further considers that the complainant's claims are contradictory in several respects. At his first hearing, for example, he maintained that he had been questioned about everyone he had met or spoken to. At the second hearing, however, he explained that all the interrogations had related to his contacts with a single colleague who had spent some time with terrorists.[5] Similarly, at the first hearing, the complainant stated that

[1] The complainant refers to the following documents: United Kingdom: Home Office, *Country of Origin Information Report - Algeria*, 14 March 2011; United States Department of State, *Country Report on Human Rights Practices 2009, Algeria*, 11 March 2010; War Resisters International (WRI), report of 29 June 1998.

[2] The complainant refers to United Kingdom: Home Office, *Country of Origin Information Report - Algeria*, 14 March 2011. According to this report, evading conscription is punishable by a 5-year prison sentence in accordance with Article 254 of the Algerian Military Justice Code 8, and, if the deserters join an armed group or enemy forces, they are liable to the maximum penalty, namely execution.

[3] Reference is made to the transcript of the hearing of 22 December 2005, p. 11.

[4] Reference is made to the transcript of the hearing of 22 December 2005, p. 13.

[5] Reference is made to the transcript of the hearing of 22 December 2005, p. 10; the transcript of the hearing of 1 December 2005, p. 6; and the decision of the Federal Office for Migration of 24

he had not been brought before a court when he had been held in preventive detention in June 2005, whereas at his second hearing he said that in June 2005 he had been required to appear before a military court.[6]

4.2 The State party further considers the complainant's allegations to be inconsistent. It points out that the complainant alleges that on several occasions he met a colleague who was regarded with suspicion because of past terrorist activities, while asserting that he behaved irreproachably out of fear of being under the surveillance of the military authorities after the end of his employment contract.[7] Furthermore, his statements regarding his failure to produce identity papers are not plausible. For instance, during the initial proceedings he stated that he had left his identity card in his house because he thought he would not need it if he went abroad, but at the second hearing he added that one of the reasons for not taking his identity documents was that the Tunisian authorities were cooperating with the Algerian authorities and that they would have returned him to Algeria if they had found identity papers on him.[8] In addition, the complainant was unable to explain convincingly how he was able to travel from Algeria to Switzerland without checks at border posts. The State party considers that the complainant's allegations that traffickers knew which routes to take and were able to draw on a network of acquaintances are questionable.[9]

4.3 Furthermore, the State party considers that the documents furnished by the complainant in evidence of the risk of ill-treatment are not convincing. The search warrant of 15 November 2005 — presented by the complainant at the same time as the request for reconsideration of 9 January 2009 — was submitted to the authorities late, without plausible explanation for the delay. Moreover, the information in the document did not correspond to the information provided by the complainant during the initial proceedings: in the course of the hearings the complainant stated that he had performed his military service from September 2000 to March 2002 and then signed a three-year employment contract with the military authorities in March 2002, i.e. until March 2005. However, according to the document of 15 November 2005, the complainant is wanted by the authorities for violating the terms of a contract concluded with the military authorities on 14 September 2000. Lastly, the State party considers that the authenticity of the arrest warrant is questionable, since the document, which is dated 15 November 2005, states that the complainant was declared a deserter on 11 December 2005. The State party further notes that it is easy to obtain or buy such documents illegally, and they should therefore be considered to be of limited evidentiary value. As for the letter from Mr. N, the Algerian lawyer, the State party considers that it contains mere unsubstantiated allegations and must therefore be deemed to be a letter of convenience.

Complainant's comments on the State party's submission

5.1 In his comments of 16 March 2012, the complainant challenges the State party's observations regarding his credibility and reiterates the facts concerning the alleged risk of torture. With regard to his not having been subjected to torture in Algeria, the complainant points out that he was nonetheless detained for 25 days in 2005 and argues that, if he were to return now, he would be at risk of worse ill-treatment, since he would be charged with disobedience, unauthorized departure and high treason.

January 2007, p. 3.

[6] Reference is made to the transcript of the hearing of 22 December 2005, pp. 9 and 11; the transcript of the hearing of 1 December 2005, p. 6; and the decision of the Federal Office for Migration of 24 January 2007, p. 3.

[7] Reference is made to the decision of the Federal Office for Migration of 24 January 2007, p. 3.

[8] Reference is made to the transcript of the hearing of 22 December 2005, p. 12.

[9] Reference is made to the transcript of the hearing of 1 December 2005, p. 9.

Furthermore, although he was not involved in political activities, the complainant states that he was suspected of collaborating with terrorists because of his links with a friend who had joined the Islamic Front. The complainant submits that he never appeared before the Blida military court and that the State party's observation in that connection is the result of a misunderstanding due to an error of interpretation, since during the hearings the complainant said that he had been taken to the first military region in Blida, and not to the Blida military court. The complainant adds that he was under considerable pressure during the entire second hearing and that the question-and-answer format used prevented him from speaking as he wished. As for the colleague whom he met several times and who was suspected of involvement in terrorist activities, the complainant states that he was a childhood friend who had chosen to join a terrorist movement during the civil war because of his religious beliefs. After the amnesty, the colleague had returned to the complainant's neighbourhood. The complainant subsequently took him to the first military region in Blida for questioning. It was at that time, solely because of the sensitive nature of his former work, that the complainant aroused the suspicions of the security officers. The complainant stresses that he never spoke about his work in the army because he knew his duty and always sought to behave correctly.

5.2 The complainant further contends that the facts he submits are plausible, contrary to the observations of the State party. According to the complainant, the fact that he left Algeria without his identity documents is not surprising, since the Government had forbade him to leave the country, and he had no time to organize his departure. The complainant adds that during his first hearing he said that he did not know that his identity card had expired in 2005 because he did not know what to expect abroad and he was unaware that his card would be important for him abroad. With regard to the search warrant, whose authenticity and evidentiary value the State party challenges, the complainant states that the warrant simply attests to the information given by him and that he submitted it to the Swiss authorities late because his family did not dare to send him evidence through the post for fear of reprisals as a result of the complainant's departure. In this connection, the complainant adds that documents of that type from the military region authorities generally contain no details of the penalty or the reason for the search because such information is considered secret. The complainant also reaffirms that the date of September 2000 appears on the search warrant because he began his military service in mid-September 2000 and then extended it by means of an employment contract signed in March 2002. As to the date of 11 December 2005 which appears on the search warrant dated 15 November 2005, the complainant points out that the warrant makes clear that he had until 11 December 2005 to report to the military authorities. Lastly, the complainant contends that the letter from Mr. N is not a letter of convenience and reiterates his arguments regarding the risk of torture.

Issues and proceedings before the Committee

Consideration of admissibility

6.1 Before considering any claim contained in a communication, the Committee must decide whether it is admissible under article 22 of the Convention. The Committee has ascertained, as it is required to do under article 22, paragraph 5 (a), of the Convention, that the same matter has not been, and is not being, examined under another procedure of international investigation or settlement.

6.2 The Committee recalls that, in accordance with article 22, paragraph 5 (b), of the Convention, it shall not consider any communications from an individual unless it has ascertained that the individual has exhausted all available domestic remedies. The Committee notes that in the instant case the State party acknowledges that the

complainant has exhausted all available domestic remedies. As the Committee finds no further obstacles to admissibility, it declares the communication admissible.

Consideration of the merits

7.1 In accordance with article 22, paragraph 4, of the Convention, the Committee has considered the present communication in the light of all information made available to it by the parties concerned.

7.2 The issue before the Committee is whether the removal of the complainant to Algeria would violate the State party's obligation under article 3 of the Convention not to return ("refouler") a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. The Committee must evaluate whether there are substantial grounds for believing that the complainant would be personally in danger of being subjected to torture upon return to Algeria. In assessing this risk, the Committee must take into account all relevant considerations, pursuant to article 3, paragraph 2, of the Convention, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. However, the aim of such determination is to establish whether the individual concerned would be personally at a foreseeable and real risk of being subjected to torture in the country to which he would be returned. It follows that the existence of a pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute sufficient reason for determining that a particular person would be in danger of being subjected to torture on return to that country; additional grounds must be adduced to show that the individual concerned would be personally at risk.[10]

7.3 The Committee recalls its general comment No. 1 and reiterates that "the risk of torture must be assessed on grounds that go beyond mere theory or suspicion". While the risk does not have to meet the test of being "highly probable" (para. 6), it must be personal and present. In this regard, the Committee has determined that the risk of torture must be foreseeable, real and personal.[11] It further recalls that, in accordance with this general comment, considerable weight will be given to findings of fact that are made by organs of the State party concerned but that it is not bound by such findings and instead has the power, provided by article 22, paragraph 4, of the Convention, of free assessment of the facts based upon the full set of circumstances in every case.[12]

7.4 In the present case, the Committee notes that the complainant invokes the protection of article 3 on the grounds that he is at risk of ill-treatment in Algeria because he is considered a deserter by the Algerian authorities and is suspected of having collaborated with terrorists. In this regard, the Committee notes that the complainant claims to have been privy to classified information during his compulsory military service. The Committee is of the view that such knowledge could imply a high risk of ill-treatment if the complainant were suspected of maintaining links with terrorists. However, the Committee considers that the complainant has failed to provide sufficient evidence to allow it to conclude that he is suspected of maintaining such links. The Committee also notes that the complainant has not at any time alleged to have been tortured in Algeria and that he has not submitted any information to support the allegation that he would be at risk of ill-treatment if he were deported to

[10] Conversely, the absence of a consistent pattern of flagrant violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

[11] See, inter alia, communication No. 258/2004, *Dadar v. Canada*, decision adopted on 23 November 2005, and communication No. 226/2003, *T.A. v. Sweden*, decision adopted on 6 May 2005.

[12] See general comment No. 1, para. 9; communication No. 375/2009, *T.D. v. Switzerland*, decision adopted on 26 May 2011, para. 7.7.

his country of origin.[13] Likewise, with regard to the State party's observations concerning the contradictory nature of the statements which the complainant made during the domestic proceedings, the Committee is of the view that the complainant has not submitted any information to support his response to the observations in question. The Committee considers that, even if it were certain that the complainant would be arrested on his return to Algeria because of a search warrant issued against him, the mere fact that he would be rearrested and considered a deserter would not constitute substantial grounds for believing that he would be in danger of being subjected to torture or inhuman or degrading treatment. In the light of the foregoing, the Committee finds that the information submitted by the complainant is insufficient to substantiate his claim that his return to Algeria would put him at a real, specific and personal risk of torture or ill-treatment.

8. In the light of the above, the Committee, acting under article 22, paragraph 7, of the Convention concludes that the complainant's removal to Algeria by the State party would not constitute a violation of article 3 of the Convention.

[13] See communication No. 154/2000, *M.S. v. Australia*, decision adopted on 23 November 2001, para. 6.5.